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November 4, 1999

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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NOV 4 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY


Re: Petition for Declaratory Ruling  
IB Docket No. 98-148

Dear Ms. Salas:

Transmitted herewith, on behalf of Bell Canada and pursuant to Section 43.51(g)(1)(ii) of the Commission's Rules, are an original and four copies of a Petition for Declaratory Ruling asking that Bell Canada be removed from the Commission's "List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets." See *FCC Public Notice*, DA 99-809 (released June 18, 1999). This list was established in the Commission's May 6, 1999 *Report and Order and Order on Reconsideration* in the above-referenced docket.

In the event there are questions concerning this matter, please contact me.

Very truly yours,



R. Edward Price  
Counsel for Bell Canada

Enclosure

No. of Copies rec'd 014  
List ABCDE

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	IB Docket No. 98-148
Reform of the International Settlements	)	
Policy and Associated Filing Requirements	)	
	)	
Regulation of International	)	CC Docket No. 90-337
Accounting Rates	)	(Phase II)
	)	
Market Entry and Regulation of	)	IB Docket No. 95-22
Foreign-affiliated Entities	)	

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**FEDERAL COMMUNICATIONS COMMISSION**  
**OFFICE OF THE SECRETARY**

**PETITION FOR DECLARATORY RULING**

Bell Canada, by its attorneys, hereby files this Petition for Declaratory Ruling seeking removal of its name from the Commission's "List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets."<sup>1</sup> As discussed below, Bell Canada does not possess 50% market share in the international transport or inter-city markets in Canada. Nor does the company have the ability to impair competition in the United States by virtue of its position as a local exchange carrier ("LEC") in some Canadian provinces. And, significantly, the FCC has previously treated the U.S. long distance affiliate of another incumbent Canadian LEC as nondominant.<sup>2</sup> For these reasons, the public interest would be best served by

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<sup>1</sup> See *FCC Public Notice*, DA 99-809 (released June 18, 1999).

<sup>2</sup> See *FCC Public Notice*, DA 99-440, File No. ITC-T/C-19990114-00023, 14 FCC Rcd 3543, 3547 (1999) (granting authority to transfer control of the Section 214 authorization held by BC TEL, an incumbent Canadian LEC, to BCT.TELUS Communications Inc., a new company reflecting the merger of two incumbent Canadian LECs, classifying BCT.TELUS as a non-dominant carrier on the U.S.-Canada route); *FCC Public Notice*, DA 98-2313, File No. ITC-214-19980921-00660, 13 FCC Rcd 22621, 22622 (1998) (granting Section 214 authority to BC TEL as a non-dominant carrier).

removing Bell Canada from the Commission's dominant carrier list. Alternatively, Bell Canada requests that the Commission prospectively waive the contract filing requirements of Section 43.51 of the Rules for U.S. carriers entering into settlement agreements with Bell Canada.

**I. Introduction and Background**

The Commission's May 6, 1999 *Report and Order and Order on Reconsideration* ("R&O") in the above-captioned proceeding removes the International Settlements Policy ("ISP") for: (1) all arrangements between U.S. carriers and non-dominant foreign carriers; and (2) for all arrangements along routes where U.S. carriers have the ability to settle traffic at rates that are at least 25 percent below the relevant benchmark.<sup>3</sup> However, U.S. carriers are still required to file with the FCC copies of their arrangements with dominant foreign carriers, even if the arrangement pertains to a route that is no longer subject to the ISP.<sup>4</sup>

Canada is one of the few routes where U.S. carriers may settle traffic at least 25% below the FCC's settlement rate benchmark.<sup>5</sup> Hence, under the *R&O*, arrangements between U.S. carriers and Bell Canada are not subject to the ISP. Nevertheless, U.S. carriers must still file with the FCC copies of any arrangements they may have with Bell Canada because Bell Canada's name appears on the FCC's list of dominant foreign carriers. While removal of the ISP for agreements between U.S. and Canadian carriers will have a positive impact on competition along the U.S.-Canada route,

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<sup>3</sup> See *Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 (1999). "The ISP requires: (1) the equal division of the accounting rate between the U.S. and foreign carrier; (2) nondiscriminatory treatment of U.S. carriers (all U.S. carriers must receive the same accounting rate, with the same effective date); and (3) proportionate return of inbound traffic." *Id.* at 7966.

<sup>4</sup> See *id.* at 7989-90.

<sup>5</sup> *Id.* at 7983-84; see also *FCC Public Notice*, DA 99-1510 (released July 29, 1999) (containing a list of international routes that are no longer subject to the ISP).

consumers would be further benefitted if U.S. carriers can enter into arrangements with Bell Canada without being concerned that their competitors will be able to review the terms and conditions as a result of the required FCC filings.<sup>6</sup>

Even without considering the added burden on U.S. carriers that are required to file their contracts with Bell Canada, or the potential harm to those carriers from disclosure of those contracts, it is discriminatory for Bell Canada to remain on the list. The list was intended to include incumbent carriers that have the power to adversely affect the competitive provision of international services to and from the United States, and Bell Canada manifestly lacks the market power to do so on any route. Hence, no regulatory purpose is served by continuing to have Bell Canada on the list and, indeed, the company's inclusion on the list may deter prospective correspondents and mislead other market participants.

The *R&O* provides that parties wishing to challenge the inclusion of a foreign carrier on the Commission's dominant carrier list may file a petition for declaratory ruling to remove that carrier from the list.<sup>7</sup> Section 43.51(g)(1)(ii) of the Commission's Rules, which was added by the *R&O*, requires that parties seeking to remove a carrier from the dominant foreign carrier list show that "the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route *or* that it nevertheless lacks sufficient market power on the foreign

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<sup>6</sup> Although U.S. carriers filing operating agreements with dominant foreign carriers may request that the Commission hold those filings in confidence, *see* 47 C.F.R. § 43.51(f), there is no assurance that such confidential treatment will not be challenged, given the fact that operating agreements are traditionally disclosed.

<sup>7</sup> *R&O*, 14 FCC Rcd at 7978-79.

end of the route to affect competition adversely in the U.S. market.”<sup>8</sup> For the reasons discussed below, Bell Canada clearly qualifies for removal from the dominant carrier list because it lacks 50% market share in both the international and long distance markets in Canada and because its market share in the local markets it serves in Canada does not enable it to adversely affect competition in the United States.

## **II. Bell Canada Does Not Have Market Power in the International or Long Distance Markets in Canada.**

Recent studies estimate that Bell Canada has less than 40% of the Canadian long distance (including Canada-U.S.) retail switched voice market,<sup>9</sup> and approximately 41.5% of the Canada-overseas switched voice markets.<sup>10</sup> Because of the aggressive build out of North American, high capacity fiber optic networks by its competitors, Bell Canada's share of Canada-U.S. cross-border facilities can be expected to be even less than 40%.<sup>11</sup> Reflecting the monopoly that Telelobe

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<sup>8</sup> 47 C.F.R. § 43.51(g)(1)(ii) (emphasis added). Similarly, under Section 63.10(a)(3) of the Commission's Rules, foreign carriers seeking to be classified as non-dominant must demonstrate that they "lack[] sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market." 47 C.F.R. § 63.10(a)(3); *see also R&O*, 14 FCC Rcd at 7976-77, 7979 n.74 (stating that foreign carriers are presumed to lack market power if they do not possess 50 percent market share in the following markets: "international transport facilities or services, including cable landing station access and backhaul facilities; inter-city facilities or services; and local access facilities or services on the foreign end.").

<sup>9</sup> *See* The Yankee Group, *Canadian Market Strategies Rep.* (vol. 3, no. 17), Aug. 1999, at 3 (estimating that Bell Canada has 39% of the consumer long distance, including Canada-U.S., market in Canada).

<sup>10</sup> *See* NBI/Michael Sone Assoc., *Canadian-Int'l Telecom Market Rep. 1999 Edition*, July 1999, § 4.0 (estimating that Bell Canada has 41.5% of the Canada-overseas (excluding Canada-U.S.) retail switched voice market).

<sup>11</sup> According to AT&T Canada, that company operates "Canada's highest capacity national long haul fibre network." AT&T Canada Press Release, July 13, 1999. AT&T Canada also  
(continued...)

Canada held on all overseas facilities until October 1998, Bell Canada does not currently own overseas facilities; rather, it relies on leased lines and the resale of the switched services of Telglobe Canada and U.S. or other foreign carriers to carry its non-U.S. international traffic.

The Canadian Radio-television and Telecommunications Commission ("CRTC") opened the Canadian long distance market, and the market for services between the United States and Canada, on a resale basis in 1990<sup>12</sup> and allowed facilities-based entry in 1992.<sup>13</sup> The Canada-overseas international services market was opened on a resale basis in 1990<sup>14</sup> and to facilities-based competition in October 1998.<sup>15</sup> Hence, the Canadian markets for services between Canada and the United States, and Canada and the rest of the world, are now fully competitive.

Until recently, Bell Canada offered long distance services for calls terminating outside of its local service area (comprised of Ontario and Quebec) through a consortium of local Canadian carriers known as Stentor Canadian Network Management ("Stentor").<sup>16</sup> In 1997, the CRTC

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<sup>11</sup>(...continued)

has "more border crossings than any other telecommunications provider in Canada." AT&T Canada Press Release, Mar. 4, 1999. Additionally, Sprint Canada has stated that its North American transmission network includes a total of approximately 400,000 strand kilometers and more than 25,000 route kilometers of fiber optic cable, and that it is developing additional fiber capacity to connect 14 of the top 15 U.S. markets by the first quarter of 2000. *See* Sprint Canada Press Release, Nov. 2, 1998.

<sup>12</sup> *See* CRTC Telecom Decision 90-3, Mar. 1990.

<sup>13</sup> *See* CRTC Telecom Decision 92-12, June 1992.

<sup>14</sup> *See* CRTC Telecom Decision 90-2, Feb. 1990.

<sup>15</sup> *See* CRTC Telecom Decision 98-17, Oct. 1, 1998.

<sup>16</sup> Bell Canada provides long distance services for calls that originate and terminate within its service area directly. An agreement has been negotiated between Bell Canada and the  
(continued...)

determined that the long distance market in Canada was competitive enough to warrant regulatory forbearance for all interexchange switched voice services, including Canada-U.S. services, and virtually all cross-border private line services offered by Bell Canada on major routes.<sup>17</sup> As a result of these orders, Bell Canada is forborne from filing tariffs for toll and toll-free services.<sup>18</sup>

In its 1997 Stentor/Bell Canada forbearance decision, the CRTC stated:

In general terms, both the toll and toll free markets [in Canada] manifest the indicators of workably competitive markets. Both are characterized by: (i) a number of competitive suppliers; (ii) subscribers who have demonstrated a willingness to switch to competitive suppliers; (iii) an adequate supply of switching and transmission facilities; and (iv) low barriers to entry. Furthermore, both markets show rivalrous behaviour, including falling prices, vigorous and aggressive marketing activities, and an expanding scope of activities.<sup>19</sup>

The already competitive long distance market in Canada has become even more competitive since the Stentor consortium has, in large part, dissolved. For instance, BCT.TELUS Communications Inc. ("BCT.TELUS"), comprised of two former Stentor companies, competes with Bell Canada in the long distance and international markets in Canada and soon will be competing in the local market.

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<sup>16</sup>(...continued)

other former Stentor companies whereby certain legacy voice and data services will continue to be managed on a cooperative basis.

<sup>17</sup> See CRTC Telecom Decision 97-19, Dec. 18, 1997; CRTC Telecom Decision 97-20, Dec. 18, 1997; CRTC Telecom Order 99-913, Sept. 23, 1999.

<sup>18</sup> An application is currently pending before the CRTC seeking forbearance from a requirement to file arrangements with other carriers relating to these domestic and international services. See Part VII Application of the former Stentor Companies for Section 29 Forbearance, July 21, 1999.

<sup>19</sup> CRTC Telecom Decision 97-19, Dec. 18, 1997, ¶ 3.

### **III. Local Markets in Canada Are Competitive, and Bell Canada's Local Market Share Does Not Enable it to Adversely Affect Competition in the U.S. Market.**

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Studies have estimated that Bell Canada's nationwide share of the local access market in Canada in 1998 was 55% for revenues and 58% for facilities.<sup>20</sup> However, Bell Canada clearly qualifies for non-dominant treatment because of regulatory provisions in Canada that preserve fair and open competition in Canada's local exchange markets.<sup>21</sup> These provisions, described below, ensure that Bell Canada cannot adversely affect competition in the United States as a result of the local access services it provides in Canada.

First, a CRTC Decision issued in 1994 introduced changes to Canada's regulatory framework specifically designed to ensure that incumbent local carriers offer local services and facilities to competing interexchange carriers under non-discriminatory terms and conditions.<sup>22</sup>

Second, a further CRTC Decision in 1997 opened local markets to competition by imposing a comprehensive set of competitive safeguards that prevent anti-competitive practices by the incumbent carriers.<sup>23</sup> Among other things, this decision mandated interconnection between incumbent and competitive local exchange carriers and directed associated technical and operational modifications to the incumbents' networks, including arrangements for local number portability. The

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<sup>20</sup> See The Yankee Group, *Canadian Market Strategies Rep.* (vol. 2, no. 10), Nov. 1998, at 4-5. Bell Canada's market share in its operating territory is considerably higher than these estimates for nationwide market share in Canada.

<sup>21</sup> See 47 C.F.R. § 43.51(g)(1)(ii); *supra* text accompanying note 8.

<sup>22</sup> See CRTC Telecom Decision 94-19, Sept. 16, 1994. Beyond that, Canada's Telecommunications Act of 1993 specifically prohibits rates that "unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage." Telecommunications Act, S.C. 1993, ch. 38, § 27(2).

<sup>23</sup> See CRTC Telecom Decision 97-8, May 1, 1997.



CRTC specified a set of "essential" facilities that incumbent carriers must unbundle and provide to competitive carriers, as well as a second set of "non-essential" facilities that must be provided for a five year period. Among the competitive safeguards imposed by the CRTC in order to protect against anti-competitive pricing, upper limits were set on the prices for essential facilities and lower limits on the prices that incumbents can charge for business local exchange services. Reflecting concerns that subsidized pricing for local residential services could act as a barrier to entry, the CRTC has put in place a "portable" subsidy scheme that makes competitive carriers eligible for contribution (i.e., universal service) payments for residential services in high cost areas. A related CRTC Decision set out the rules by which competitive carriers can collocate transmission facilities in incumbent carriers' central offices.<sup>24</sup>

As a result of these decisions, competitive local carriers are now established in Bell Canada's operating territory and throughout Canada. According to one recent article, four major CLECs in Canada (AT&T Canada, Sprint Canada, Optel Communications, and Vidéotron) now provide approximately 340,000 local lines to businesses in Canada.<sup>25</sup> An additional fifteen CLECs are expected to enter local Canadian markets shortly to offer a variety of services to residential and business customers.<sup>26</sup> AT&T Canada, which in March 1999 merged with Metronet Communications -- Canada's largest competitive local exchange carrier -- has in service or under development 22 city networks across Canada that provide access to 70% of local customers and 90% of corporate office

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<sup>24</sup> See CRTC Telecom Decision 97-15, June 16, 1997.

<sup>25</sup> See John Riddell, "And They're Off! New Local Carriers Race to Sell Business Phone Lines," *Telemanagement* #167, July-Aug. 1999, at 12.

<sup>26</sup> *Id.* at 12-13.

headquarters' business access lines.<sup>27</sup> Sprint Canada is providing local services in Calgary, Vancouver and Toronto, and plans to offer local services in Montreal by the end of 1999.<sup>28</sup> And with the dissolution of the Stentor consortium, BCT.TELUS plans to compete against Bell Canada for local customers in Canada.<sup>29</sup>

The foregoing indicate an abundance of options for U.S. carriers seeking to terminate traffic in Canada. Given these market conditions, along with the pro-competitive regulatory environment in Canada, Bell Canada clearly lacks the ability to affect competition adversely in the United States. The company should therefore be removed from the Commission's list of dominant foreign carriers.

**IV. If the Commission Does Not Remove Bell Canada from Its Dominant Carrier List, it Should Waive the Contract Filing Requirements of Section 43.51 of the Rules for U.S. Carrier Arrangements with Bell Canada.**

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Under Section 1.3 of the Rules, the Commission may waive its contract filing requirements "for good cause shown."<sup>30</sup> As explained above, the purpose of the filing requirement for arrangements with dominant carriers -- i.e., the protection of competition in the U.S. international telecommunication market -- is more likely to be advanced by waiver of the rule, in the case of Bell Canada, than by its continued application. The public interest in enhancing competition will be served if U.S. carriers are free to enter into arrangements with a variety of Canadian carriers, including Bell Canada, without having to file their operating agreements with those carriers.

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<sup>27</sup> "AT&T Canada Announces Expansion of Local Telecom Networks Into Additional Canadian Cities," AT&T Canada Press Release, Sept. 8, 1999.

<sup>28</sup> "Sprint Canada Inc. Brings Choice and Savings to Local Phone Services in the Greater Toronto Area," Sprint Canada Press Release, Sept. 1, 1999.

<sup>29</sup> See John Riddell, *supra* note 25, at 12, 14.

<sup>30</sup> 47 C.F.R. § 1.3.

In view of the foregoing, if the FCC decides not to remove Bell Canada from the list, it should waive the contract filing requirements that would otherwise apply to U.S. carriers entering into agreements with Bell Canada.

**V. Conclusion**

Bell Canada's limited share of the Canadian long distance and international markets, as well as the regulatory environment in Canada, prevent Bell Canada from adversely affecting competition in the United States. Bell Canada is therefore entitled to non-dominant treatment, and it respectfully requests that its name be removed from the Commission's "List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets." Alternatively, the Commission should waive its contract filing requirements in Section 43.51 of the Rules as they pertain to agreements between U.S. carriers and Bell Canada.

Respectfully submitted,

BELL CANADA

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